File No. 120514

Committee Item No. 21
Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

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Committee: Government Audit and Oversight **Date** June 14, 2012

Board of Supervisors Meeting **Date** _____

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OTHER **(Use back side if additional space is needed)**

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Completed by: Alisa Miller **Date** June 8, 2012
Completed by: _____ **Date** _____

An asterisked item represents the cover sheet to a document that exceeds 25 pages.
The complete document can be found in the file.

FILE NO. 120514 ORDINANCE NO.

[Memorandum of Understanding - International Brotherhood of Electrical Workers Local Union 6, AFL-CIO]

Ordinance adopting and implementing the arbitration award establishing the Memorandum of Understanding between the City and County of San Francisco and the International Brotherhood of Electrical Workers, Local 6, AFL-CIO, to be effective July 1, 2012, through June 30, 2014.

NOTE: Additions are *single-underline italics Times New Roman*; deletions are ~~*strike-through italics Times New Roman*~~. Board amendment additions are double-underlined; Board amendment deletions are ~~strikethrough normal~~.

Be it ordained by the People of the City and County of San Francisco:

Section 1. The Board of Supervisors hereby adopts and implements the arbitration award establishing the Memorandum of Understanding between the City and County of San Francisco and the International Brotherhood of Electrical Workers, Local 6, AFL-CIO, to be effective July 1, 2012, through June 30, 2014.

The arbitration award establishing the Memorandum of Understanding so implemented is on file in the office of the Board of Supervisors in Board File No. 120514.

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: Elizabeth S. Salveson
ELIZABETH S. SALVESON
Chief Labor Attorney

LOCAL 6 BARGAINING HIGHLIGHTS

Wages:

- Fiscal Year 2012-2013: No wage increases.

- Fiscal Year 2013-2014:
  - 1% on July 1, 2013
  - 1% on January 4, 2014
  - 1% on March 29, 2014

- Internal adjustments for 8 transmission line and powerhouse operator classifications (by arbitration award)

Health:

- Health benefit cost reform effective January 1, 2014:
  - For "medically single employees" (Employee Only) enrolled in any plan other than the highest cost plan, the City shall only contribute ninety percent (90%) of the "medically single employee" (Employee Only) premium for the plan in which the employee is enrolled.
  - For "medically single employees" (Employee Only) enrolled in the highest cost plan, the City shall only contribute ninety percent (90%) of the "medically single employee" (Employee Only) premium for the second highest cost plan. However, in calendar year 2014 only, the City will subsidize half of the amount of the increased premium cost for "medically single employees" who elect to enroll in the highest cost plan.
  - The parties will form a Joint Labor-Management Healthcare Committee to discuss healthcare issues, including a possible wellness program, with a re-opener in the second year of the contract by mutual agreement.

- Payment of Delta Dental premiums for bargaining unit members beginning 1/1/13: $5/month for employee-only, $10/month for employee + 1 dependent, or $15/month for employee + 2 or more dependents.

- **Floating Holidays:** Employees will receive a one-time award of two additional floating holidays in Fiscal Year 2012-2013.

- **Elimination of Travel Pay:** Effective July 1, 2012, employees who are San Francisco residents and who are assigned to work at the Airport, San Bruno Jail, Millbrae, Sharp Park or Sunol, shall no longer receive Travel Pay. Instead, employees who received Travel Pay in Fiscal Year 2011-2012 will receive a one-time lump sum payment equivalent to the amount of Travel Pay they earned in Fiscal Year 2011-2012.

- **Reform of Shift Differential Pay:** Employees who work only one to three hours into the swing or graveyard shift shall no longer be eligible for Shift Differential Pay on those hours. Employees are only eligible for Shift Differential Pay if they work a minimum of four hours on a swing or graveyard shift.

- **Substance Abuse Testing:** Creation of a process for implementing a Substance Abuse Prevention Program.

Christopher D. Burdick
Arbitrator • Mediator • Alternative Dispute Resolution

CITY AND COUNTY OF SAN FRANCISCO
IN INTEREST ARBITRATION PROCEEDINGS
PURSUANT TO CHARTER SECTIONS A8.409

International Brotherhood of Electrical Workers, Local 6, AFL-CIO Union and The City and County of San Francisco Employer	OPINION AND AWARD

Board Members

Christopher D. Burdick:	Neutral Chairperson
Mary Hao:	City Board Member
Kevin Hughes:	Union Board Member

Appearances

On Behalf of The Union:
Peter W. Saltzman, Esq.,
Leonard Carder, LLP,
600 Harrison Street,
San Francisco, CA
94102

On Behalf of the Employer
Michele Modena, and
Terrence Howzell, Esq.,
Deputy City Attorney,
1390 Market Street, 5th Floor,
San Francisco, CA, 94102

INTRODUCTION

The impasse between the parties came on for interest arbitration hearings on May 1 and 2, 2012, at 1 South Van Ness Avenue, San Francisco, pursuant to Section A8.409-4 of the Charter ("Charter") of the City and County of San Francisco ("City").

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Christopher D. Burdick, an attorney at law and arbitrator/mediator, had been previously agreed upon by the parties to act as the neutral Chairperson of the Arbitration Board. Mary Hao, Employee Relations Manager from the City's Department of Human Resources ("HR") was selected by the Employer as its Board Member; and Kevin Hughes, Assistant Business Manager of the International Brotherhood of Electrical Workers, Local 6, AFL-CIO ("IBEW", "Local 6" or "The Union") was selected by the Union as its Board Member.

The City was represented at the hearing by Michelle Modena and Terrence Howzell, Esq., Deputy City Attorney. The Union was represented by Peter W. Saltzman, Esq., of Leonard, Carder, PC. The hearing was recorded by a Certified Shorthand Reporter, and the parties were afforded the full opportunity to present and call witnesses, to cross-examine the witnesses of the other party, and to present evidence and arguments in support of their positions. At the conclusion of the evidentiary hearing, the parties waived briefs and made very brief closing oral arguments, at which time the matter stood submitted for decision.

I

ISSUES

At the conclusion of the hearing, the parties had been able to arrive at tentative agreements on some matters which had been unresolved up to arbitration. At the conclusion of the evidentiary hearing, three matters were submitted to the Board for final and binding, arbitral resolution. They are described more fully hereinafter but may be referred to, for the purposes of this Award, as follows:

1 Sunol travel practices

2. Internal, equity adjustments for some classes

3. North American Electric Reliability Corporation ("NERC") differential for some classes.

II

LAST, BEST, AND FINAL OFFERS/DEMANDS OF THE PARTIES

The last, best, and final offers ("LBFO") of Local 6 on the three disputed Issues (described more fully hereinafter) were as follows:

1) Sunol travel practices – – no change in existing contract language
2) NERC differentials – – an across-the-board differential over base salary of 10-percent (10%) for employees who are NERC certified
3) Internal, equity adjustments as follows:

   a. Class7480 – 15%
   b. Class 7482 – 15%
   c. Class 7484 – 15%
   d. Class 7488 – 15%
   e. Class 7229 – 15%
   f. Class 7285 – 15%
   g. Class 7319 – parity with class 7371
   h. Class 7510 – 5%
   i. Class 7255 – 5%

The last best and final offers of the City on these three disputed Issues were as follows:

1) Sunol travel practices – – delete contract language which requires employees assigned to Sunol to first report to of Millbrae at the start of the shift and to return to Millbrae at the end of the shift

2) NERC differential – – no differentials for any of the classes proposed by the Union.

3) Internal, equity increases as follows:

a. Class 7480 – – 0%

b. Class 7482 – – 0%

c. Class 7484 – – 0%

d. Class 7488 – – 0%

e. Class 7229 – – 10%

f. Class 7285 – – 10%

g. Class 7255 – – 0%

h. Class 7510 – – 0

i Class 7319 – – parity with Class 7371

IV

TENTATIVE AGREEMENTS

Prior to, and during the, arbitration, the parties managed to reach tentative agreements on almost all of the issues which they had put upon the bargaining table. The Chair of the Board very closely queried the advocates and his fellow board members as to whether the tentative agreements had been reached in good faith and at arms-like, and was assured by everyone involved in the process that such was the case. Therefore, the Board approves each of these tentative agreements and directs the inclusion of them all into the new Collective Bargaining Agreement ("CBA"), as follows:

Union Proposals

- Union 1 – Term
- Union 2 – Wages
- Union 8 – Unpaid Furlough Days
- Union 9 – Work Clothing (addition of 7229 classification only; status quo on allowance amount)
- Union 10 – Codify sideletter *re*: lookback for mandatory emergency overtime

- Union 11 – DBI and DPW Parking Tickets
- Union 13 – Personnel Files
- Union 14 – Probationary Period
- Union 15 – Vacancy Bidding at Water Supply and Treatment Division
- Union 16 – Acting Assignment Pay
- Union 17 – Include compensation schedule in MOU (verbal agreement)
- Union 19 – Notice of JOCs
- Union 21 – Safety Shoes

City Proposals

- City 1 – Global Name Changes (incorporated throughout contract)
- City 2 – Recognition
- City 4 – Tool Insurance clean up
- City 5 – Online Tuition Reimbursement
- City 6 – Appendix B Safety Meetings clean up
- City 8 – Security of Effects and Tools clean up
- City 9 – Appendix B Vacation clean up
- City 10 – Appendix B Shift Bidding clean up
- City 11 – Discipline/Discharge of Probationary Employees
- City 12 – Standby Pay
- City 14 – Travel Reimbursement
- City 16 – Night Duty Differential
- City 18 – Compliance with Codes clean up
- City 21 – Non-discrimination
- City 22 – Professional Development clean up
- City 27 – Expedited Arbitration
- City 31 – Voluntary Time Off

- City 33 – Hetch Hetchy Moccasin and Early Intake Schedules
- City 34 – Overtime and Shift Practices clean up
- City 38 – Grievance Procedure
- City 39 – Substance Abuse Testing
- City 43 – Workweek and Hours
- City 47 – Appendix B Safety Practices clean up
- City 49 – OT, Vacation, and Shift Bidding clean up
- City 50 – Miscellaneous Conditions of Employment
- City 51 – Appendix B-1 Past Practices – DTIS Schedule
- City 52 – Appendix B Safety Practices clean up

V

RELEVANT CHARTER PROVISIONS

Under the Charter, unresolved differences in negotiations between the City and a recognized employee organization which persist to the point of impasse are submitted to final and binding interest arbitration, to be heard and decided by a three-member board. The City appoints one member thereto, the union appoints its member, and those two members select a third, neutral person to chair the board.

Charter Section A8.409 requires the arbitration board to decide each issue in dispute by

> "selecting whichever last offer of settlement on that issue it finds by a preponderance of the evidence submitted during the arbitration most nearly conforms to those factors traditionally taken into consideration in the determination of ages, hours, benefits and terms and conditions of public and private employment, including, but not limited to: changes in the average consumer price index for goods and services; the wages, hours, benefits and terms of conditions of employment of employees performing similar services; the wages, hours, benefits and terms and conditions of employment of the employees in the city and county of San Francisco; heath and safety of employees; the financial resources of the city and county of San Francisco, including a joint report to be issued annually on the City's financial condition for the next three fiscal years from the Controller, the Mayor's budget analyst and the budget

analyst for the board of supervisors; other demands on the city and county's resources including limitations on the amount and use of revenues and expenditures; revenue projections; the power to levy taxes and raise revenues by enhancements or other means; budgetary reserves; and the City's ability to meet the costs of the decision of the arbitration board."

This Charter interest arbitration system is referred to in the labor world as "issue-by-issue, baseball arbitration." The Charter's arbitration board may only select the offer on each disputed issue made by one party. The Board may not modify or alter, to its choosing, any proposal but may approve only one of the competing proposals on each subject still at impasse. Here, as noted above, there are only three issues to be resolved.

VI

THE HEARING TESTIMONY AND EVIDENCE

The City did not advance its inability to pay for either of the two proposals advanced by the Union, nor did either party rely upon or introduce any evidence on increases in the Consumer Price Index (CPI) or of external private sector "comparables" in support of its position. There were several offers of proof (accepted by the other party), and numerous factual stipulations made upon the record. All the documentary evidence offered by each party was not objected to by the other, and so all went into evidence without objection.

The Union called one witness on its NERC and internal equity proposals, Mr. Bruce Krejcik ("Krejcik"), a Power Generation Supervisor (Class 7488) at the City's Hetch-Hetchy water and power site in Tuolumne County. The Union relied on the Declaration and live testimony of Mr. Krejcik and the extensive work he had done in reviewing the City's job descriptions and salary survey and conducting his own written analysis thereon, as set forth in Union Exhibit 1 and the tabs thereto.

The City relied on its salary surveys (and analysis and arguments thereon) for the Hetch-Hetchy classes impacted by the Union's NERC and internal equity proposals, as set forth in City Ex. 3. In support of its position on the Sunol travel practice dispute the City called Mr. Kent Nelson ("Nelson"), a civil engineer and the City's Water Systems Operations Manager.

Hetch Hetchy Operations and The Internal Equity Proposals -- as with the NERC differential proposal (see *infra*), the Union's proposal and the City's counterproposal deal almost exclusively (or so it appears, except for Class 7510, the ten Light Fixture Maintenance Workers, nine of whom are employed at San Francisco International Airport) with employees assigned to the City's extensive power operations at its Hetch-Hetchy Reservoir in Tuolumne County (and, ,in smaller numbers, to the downstream operations). Built in the early 20th century, the O'Shaughnessy Dam in the Hetch- Hetchy Valley provides the City and its inhabitants, through an extensive series of dams and pipes, mostly by gravity feed, with all of its water and a great deal of its electricity. The City sells water to several irrigation districts and most of the cities on the San Francisco Peninsula and also sells electricity to several municipally-owned utilities (*e.g.*, the cities of Palo Alto and Alameda), as well as to the City's own Municipal Transportation Agency (MTA) and to PG&E, on a much smaller scale.

Hetch-Hetchy is remote and physically isolated, and the City provides City-owned, rent-subsidized housing to its employees stationed at Hetch-Hetchy, if they desire to rent it. The City employs at Hetch-Hetchy a number of Power Generation Technicians and Powerhouse and Transmission Line Workers (and their Supervisors) represented by Local 6, as well as water system operators and plumbers represented by other City unions. At Hetch-Hetchy, the City maintains an Early Intake (Kirkwood) facility, with three generators, which today can be, and commonly is, remotely controlled from the City's Moccasin Powerhouse and Reservoir facility. But the physical presence of electricians at Kirkwood is often required, for routine maintenance, shutdown of the equipment, and dealing with third-party contractors doing the massive bond-funded overhaul and replacement work at that facility.

Like most public employers, the City prefers to promote from within, to take advantage of experience and the expertise learned on the job, as well as to promote careers. But, according to the uncontradicted testimony of Mr. Krejcik, at the present time, due primarily to a low salary differential ("wage compaction") between several of the job classes at Hetch Hetchy, the City has been unable to fill, for example, Class 7488 by promotion from within to this class, which has expanded from a single FTE in the

1990's to four positions today. So, the last two vacancies in Class 7488 were filled by hiring persons who had retired from other public electrical agencies and who possessed, on paper, the minimum qualifications, knowledges, skills, and abilities but who, in practice, have had to do a lot of learning on the job. Employees in the lower Electrician job classifications have been unwilling to take promotions to Class 7488 because the salary differential simply does not justify moving to a higher class. The City concedes that there is a serious wage compaction problem here, as well as in classes 7229 and 7285.

The salary survey data (City Ex. 3) compiled by the City shows that for Class 7488 the City is 17.99% below the average using the City's own numbers, and that same data shows as well that Class 7482 trails by 7.28% and Class 7484 by 17.36%. The salary lag in the Transmission Line and Powerhouse Electrician Supervisor (and directly lower or higher) classes are not as a stark, but all of these classes work together, and are historically and functionally interrelated and interdependent, either horizontally or vertically.

Since Hetch Hetchy provides electricity "on the grid", it is now subject to regulation by NERC, a federal agency of byzantine complexity, rigid standards and a blizzard of regulations. NERC requires extensive on-duty, continuing training, a series of examinations, and resulting certification (and recertification). Many tasks and much supervision cannot be performed by employees who do not possess current, valid NERC certification, and those presently employed who cannot qualify for NERC may lose their jobs. [1] Mr. Krejcik is firmly convinced that the public sector comparables used by the City in its Exhibit 3 are defective wherever the City compares an IBEW Hetch-Hetchy class to classes in another agency where that class does not have a NERC certification requirement, e.g., Sacramento MUD, Modesto ID, Turlock ID, and East Bay MUD. The Chair believes those concerns and objections are perhaps overstated -- it is the actual work performed on a routine basis, and not the minimum qualifications the employer sets to do that work which determines what is truly "comparable" for the purposes of the San Francisco Charter. If, for example, the SF Fire Department requires an Associate of Arts

degree in Fire Science **and** an EMT certificate as **minimum** requirements to obtain and hold an entry-level H-2 Firefighter job, whereas Stockton merely requires a GED, that does not mean that the firefighters in San Francisco and Stockton are not doing essentially the same job. San Francisco FD's requirements may be much higher, and more desirable, but that does not mean that the daily tasks, duties, and responsibilities are significantly different. But Mr. Krejcik made a strong showing that the mix and overlap of daily duties performed by IBEW's Hetch Hetchy electricians, at Kirkwood and at Moccasin (as well as downstream at the various facilities between O'Shaughnessy Dam and the City limits) make the task-and-duty demands on these classes more diverse and justify the internal equity increase sought by the Union as set forth in its LBFO. The City's LBFO is not supported by its own data and does not go far enough to address the wage compaction, recruitment, retention, and internal equity problems. By adopting the Union's LBFO the Board may, indeed, be overcompensating two or three of these classes [2] in a manner not supported by the data. But given the "baseball arbitration" aspect of this process, we have little choice: if we were to adopt the City proposal, more classes would be inappropriately underpaid, as demonstrated by the data, than there are classes that might be overcompensated under the Union LBFO. If the Board could pick-and-choose (which it cannot), the result might be somewhat (but not greatly) different.

The NERC Differential Proposal – the Union proposes an across-the-board differential of ten-percent (10%) over base salary for every NERC-certified worker in the bargaining unit. The Union offered no proof that any other public or private sector comparable (e.g., Sacramento Municipal Utility District, Modesto Irrigation District, Turlock Irrigation District, Los Angeles Department of Water and Power, etc., etc.) pays such a differential. The City employs many other workers in job classifications subject to supervision by regulatory agencies which require regular recertification but which classifications do not receive additional pay differentials driven merely by that factor

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[1] Other regulators (and critics) in addition to NERC abound, including the State Public Utilities Commission, the State Water Resources Control Board, the EPA, and a myriad of other obscure, little-known, but powerful, state, federal, and county agencies, boards, and commissions.

[2] These are not large numbers of employees we are talking about. For example, in Class 7480 (entry level class for probationers only), we have one FTE; in 7482, 11 FTEs; in 7484 six FTEs; and in 7488 three FTEs.

(e.g., attorneys, doctors, nurses, architects and engineers, peace officers, etc., etc.). The Union pointed to none of the applicable criteria under the Charter to achieve this proposal, which appears to be based primarily upon the hope that it might support a *de facto* wage increase limited to these job classes which might not be obtainable by a salary increase broadly applicable to all the job classifications of the bargaining unit.

The Union has thus failed to carry its burden of proof that this proposal is supported by the applicable charter criteria, and, therefore, the Board declines to adopt it but, instead, adopts the City's proposal, which is to maintain the *status quo* and pay no such differential.

Sunol Travel Practices

Appendix B (II: Working Conditions) of the present CBA basically provides that when Water Department employees regularly assigned to Millbrae receive a temporary assignment to Sunol, they must first report to Millbrae, then travel to Sunol, in a City-provided vehicle, on City time, and they must then return from Sunol to Millbrae to finish their shift. At the present time, there are two journey-level Electricians (one who bid for a vacant position, the other who was hired from an announcement which explicitly stated that the work site would be in Sunol) assigned regularly and full-time to Sunol, and there is one full-time Electrician Supervisor assigned to Millbrae who travels practically every day to Sunol to supervise these two journey-level Electricians and to perform hands-on work of his own. This Supervisor (who bid for a vacancy which explicitly provided that the workplace would be Millbrae) drives in the morning from his home to Millbrae, prints out work orders and does some preparatory work, and then gets in a City car and drives to Sunol (a drive which, depending on the traffic, can take anywhere from 60-to-90 minutes), arrives in Sunol, tries to find his subordinate Electricians (who have already reported to work, probably 90 minutes earlier for their regular shift, collected their City van and tools, and gone off to work on work orders), makes sure that the those two employees are actually on the job and working, and then performs his own work. Assuming that overtime is to be avoided, that Supervisor then, 60-90 minutes before the end of his shift, gets back in his City car and drives back to Millbrae to log off work. So,

as a practical matter, the supervisor is never in Sunol at the start or at the end of the shift at the same time as the two Electricians he supervises, making start-of-shift briefing, training, instruction, and delivery of work orders effectively impossible.

There is no Electrician's shop at Sunol, but the City is presently constructing one. Meanwhile, the two journey Electricians work out of their City vans, as does the Supervisor. If a meeting is needed there is a conference room but, amazingly (especially since this is Electricians we are talking about) no way to communicate by conference call. The journeymen have no City cell phones but do have their own.

In the abstract, and viewed from the outside, this practice is absurd and wasteful of City time and resources (not to mention hard on the body of the Supervisor, who has to put up with the daily monotony and stop-and-go of the terrible Sunol Grade commute). But the Union points out that all the City has to do to avoid this problem is to explicitly provide in the next announcement for vacancies in either Sunol or Millbrae, or both, that the work site can be either place and that the City reserves the management right to designate either (or apparently both) as the worksite at the time an appointment is made. The Union represented to the Arbitration Board that there is nothing in the present CBA which would prevent management from posting vacancies and offering them on this basis. The Union also stated that if both the Union and the employee agree, there is also nothing in the CBA which would prevent a waiver (temporary or permanent) of the employee's previous election of a worksite.

The Union's argument is, essentially, that 1) an irrevocable promise is made to the applicant at the time the vacancy is posted as to where the work will be routinely assigned; and 2) that once an employee accepts that assignment, no change can be made without the express, prior agreement of both the Union and the employee; and 3) that, lacking either, the City is bound by the representation made in the announcement. This position is reinforced by the Award of Arbitrator Alexander Cohen of October 1, 1999 (City Ex. 3 to the MTA interest arbitration binder), who held in 1999 that

> ... the parties agree that unit employees permanently assigned to Millbrae [like the Supervisor here] who drive a City vehicle to Sunol for a temporary short-term assignment of up to five days have been, and presumably should be, in pay status or "on-the-clock" during the trip" and that the same protections apply "... for travel from Millbrae to Sunol and in City vehicles where the unit employee is on either a short-term or long-

term assignment [and] accordingly, the practice exists, it is appropriate to include in the collective bargaining agreement and must be appended to the agreement."

(Cohn Award, pp P. 33-44).

The City's witness in support of its proposal was Mr. Nelson, who testified that he wanted his Supervisor at Sunol during the same hours as the two journeymen essentially for two main reasons: 1) the Electricians were taking work orders not assigned by the Supervisor but improperly requested by non-IBEW area managers to take care of their own short-term needs and concerns; and 2) reports that one of the journeymen was showing up late, leaving early, and irritating his more conscientious co-worker by doing so. The lack of face-to-face AM and PM briefing and communication was also believed to be (surely for good reason) a chronic problem. But Nelson concedes he had told the Supervisor, Mr. Meyers, 3 or 4 months ago to deal with the attendance problem but had not yet heard anything back. Why had not Mr. Nelson followed up with the supervisor at Millbrae, who he probably sees every week? We do not know. If there is an attendance problem and one of work order rule-breaking at Sunol, this is a counseling and disciplinary problem and should not require a change in the CBA to deal with one wayward worker. It is also unclear why Sunol needs one Supervisor to deal with just two Electricians. [3]

THE BURDENS AND QUANTUM OF PROOF

The Union bears the burden of persuasion on its proposals on NERC pay and on internal, equity adjustments for the job classes enumerated and described above. The City bears the burden of proof and persuasion on its Sunol travel practice proposal.

In interest arbitration proceedings of this type, the burden of proof rests upon the party seeking a change in the status quo: see, e.g., Parker v City of Fountain Valley, 127 Cal. App. 3d 99, 113 (1981); Layton v. City of Pomona, 60 Cal. App. 3d 58, 64 (1976).

[3] The SFPD does not assign one Sergeant to supervise two Officers, nor does the SFFD assign one Lieutenant to oversee two Firefighters.

So the Union must, by a preponderance of the evidence, prove that its NERC and internal equity proposals more closely meet the criteria of the Charter than would upholding the City's desire to adhere to the status quo. Conversely, the City bears a similar burden of proof in convincing the Panel that it should delete the existing Sunol travel language from the Collective Bargaining Agreement

The applicable quantum of proof required is proof by a preponderance of the evidence.

Cal. Ev. Code section 115 states:

> § 115. Burden of proof. "Burden of proof" means the obligation of a party to establish by evidence a requisite degree of belief concerning a fact in the mind of the trier of fact or the court. The burden of proof may require a party to raise a reasonable doubt concerning the existence or nonexistence of a fact or that he establish the existence or nonexistence of a fact by a preponderance of the evidence, by clear and convincing proof, or by proof beyond a reasonable doubt. Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence.

"Preponderance of the evidence" here simply means that the party bearing the burden of proof on each issue must establish the facts of its presentation with evidence found by the trier-of-fact (here, the Panel) as being more likely to conform to the criteria of the Charter than not. The "preponderance" standard simply requires the trier of fact "to believe that the existence of a fact is more probable than its nonexistence." In re Angelia P., (1981) 28 Cal.3d 908, 919.

V

ANALYSIS AND APPLICATION OF THE CHARTER CRITERIA TO THE EVIDENCE

1. Consumer Price Index.

Except in the case of the Class 7510 (the 10 FTEs who change light bulbs at SFO and other City departments), neither the Union nor City proposals were impacted, driven or supported, one way or the other, by increases in the CPI. Thus no testimony was

presented on the CPI by either party, and the Board did not consider the CPI in rendering this Award.

2. Wages, hours, benefits and terms and conditions of employment of employees performing similar services.

This factor looks to the "prevailing rates" paid, and the terms and conditions maintained, by other employers (both public and private) to their employees performing like or similar work. With the exception of a few classes arguably impacted by PG&E, neither party submitted any testimony in regards to wages, hours, or conditions of private sector employers: as noted above, each party submitted base salary data only (upon which there was no conflict as to the amounts, only as to the relevance and comparability) of a number of other public sector employers, including the Sacramento Municipal Utilities District, the Turlock Irrigation District, the Modesto Irrigation District, Los Angeles Department of Water and Power, the Cities of Santa Clara and Alameda, East Bay Municipal Utilities District, etc.

3. The wages, hours, benefits, and terms and conditions of employment of other employees in the City and County of San Francisco.

With the exception of the wage compaction issues at Hetch-Hetchy and a few "parity" proposals (linking the salary of a very few job classes in this unit to a job classes at MTA [i.e., Class 7319 {Electric Motor Winder} and Class 7371 {Electric Transit Mechanic}]), no proposal was predicated upon comparability with other City employees. The wage compaction issue is a significant driver in the Award on the internal equity issue, *infra*.

3. Health and Safety of employees.

Neither party claimed that adoption of the other's proposals (or the maintenance of the status quo) would alter the existing health and safety of the workplace.

4. The financial resources of the City and County of San Francisco, including a joint report to be issued annually on the City's financial condition for the

next three fiscal years from the Controller, the Mayor's budget analyst and the budget analyst of the board of supervisors.

As noted above, the City did not claim that it lacks the financial resources to meet the Union's demands, and so there was no testimony, direct or indirect, upon the City's budget, cash flow, or the general state of the municipal fisc.

7. **Other demands on the City and County's resources (including limitations on the amount of revenue and expenditures); City Revenue Projections; the power to levy taxes and raise revenue by enhancement or other means; budgetary reserves; and the City's ability to meet the costs of the decision of the arbitration board.**

As described above, "ability to pay" is not an issue and so there was no testimony upon these five Charter criteria.

APPLICATION OF THE CHARTER CRITERIA TO THE THREE ISSUES AT IMPASSE

The Arbitration Board cannot "split the baby" here or fashion its own solution: it must adopt one of the two proposals on each of the three Issues before it.

Internal Equity Increases – The Internal Equity Increases proposal that most nearly conforms to the mandatory Charter criteria is that of the Union. The high level of NERC certification across most of these classes; the mix and overlap of daily duties performed by IBEW's Hetch Hetchy electricians, at Kirkwood and at Moccasin (as well as downstream at the various facilities between O'Shaughnessy Dam and the City limits); the diverse task-and-duty demands, as compared to the public sector comparables, of these classes; and the City's own salary data all justify the internal equity increase sought by the Union as set forth in its LBFO. Much of the City's LBFO is not supported by its own data and does not go far enough to address the wage compaction,

recruitment and retention, and internal equity problems. By adopting the Union's LBFO the Board may, indeed, be overcompensating two or three of these classes [4] in a manner not supported by the data, but given the "baseball arbitration" aspect of this process, we have little choice: if we were to adopt the City proposal, more classes would be inappropriately underpaid, as demonstrated by the data, then there are classes that might be overcompensated under the Union LBFO. If the Board could pick-and-choose (which it cannot), the result might be somewhat (but not greatly) different.

NERC Differential -- The NERC proposal that most nearly conforms to the mandatory Charter criteria is that of the City. Not one of the criteria set forth in the Charter supports the Union proposal, which appears to be based upon the preoccupation of the Union's sole witness with NERC requirements but which ignores the lack of any evidence to support it other than mere desire. The Board can only consider the Charter criteria in selecting one of the two competing proposals. The Board therefore accepts the City NERC proposal and rejects that of the Union.

Sunol Travel Practices – The Sunol Travel proposal that most nearly conforms to the mandatory Charter criteria is that of the Union, a position well-based on the 1999 Award of Arbitrator Cohen, who found this to be a well-established past practice at that time and who ordered it to be memorialized and set forth in the new collective bargaining agreement, where it has remained without alteration ever since. Disciplinary problems and concerns (no matter how well-based) dealing with a very small number of employees does not justify the alteration of the CBA, particularly where, as here, the Union concedes that management can avoid this problem in the future simply by doing a better job in announcing worksite locations.

[4] These are not large numbers we are talking about. For example, in Class 7480 (entry level class for probationers only), we have one FTE; in 7482, 11 FTEs; in 7484 six FTEs; and in 7488 three FTEs.

AWARD

The Union internal equity proposal is accepted.

Christopher Burdick, Chair – I concur _____

Mary Hao, City Member -- I dissent _____

Kevin Hughes, Union Member – I concur _____

The Union NERC proposal is rejected.

Christopher Burdick, Chair – I concur _____

Mary Hao, City Member -- I concur _____

Kevin Hughes, Union Member – I dissent _____

The City's Sunol travel proposal is rejected.

Christopher Burdick, Chair – I concur _____

Mary Hao, City Member -- I dissent _____

Kevin Hughes, Union Member – I concur _____

May 9, 2012

COLLECTIVE BARGAINING AGREEMENT

BETWEEN AND FOR

THE CITY AND COUNTY OF SAN FRANCISCO

AND

THE

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

LOCAL 6

JULY 1, 2012 - JUNE 30, 2014

** Complete copy of document is
located in

File No. 120574

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